

Cooper, Kathy

From: IRRC
To: Everyone
Subject: FW: Dam Safety and Waterway Management Fees Proposed Rulemaking
Attachments: ANNEX - PER LRB.pdf

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2012 JAN 23 P 9 55

-----Original Message-----

From: Tate, Michele [<mailto:mtate@pa.gov>]
Sent: Friday, January 20, 2012 1:06 PM
To: IRRC; Smith, James M.; Michelle L. Elliott; Wilmarth, Fiona E.; Johnson, Leslie A. Lewis; Serra, Jamie (JSerra@pahouse.net); 'Joseph Deklinski' (Jdeklins@pahousegop.com); Richard Fox (RFOX@pasenate.com); apankake@pasen.gov
Cc: Sullivan, Curtis; Brennan, Douglas; Morrison, Richard S; Allan, Patricia M (DEP)
Subject: Dam Safety and Waterway Management Fees Proposed Rulemaking

Good Afternoon:

I want to bring to your attention the attached Annex for proposed rulemaking #7-466: Dam Safety and Waterway Management Fees, which includes editorial modifications that will appear in the Pa Bulletin publication of the rulemaking on January 28, 2012. The proposed rulemaking was adopted by the Environmental Quality Board on December 21, 2010, and delivered to your respective offices on January 18, 2012. Due to the delay in publishing the proposed rulemaking for comment, the Annex contained amendments that have now been codified through an overlapping final rulemaking, #7-452: Dam Safety and Waterway Management, which was published in the PA Bulletin on January 8, 2011 at 41 Pa.B. 219. To avoid confusion, those amendments which were previously codified have now been removed from the attached Annex. The editorial edits to the attached Annex were made in cooperation with the Legislative Reference Bureau and do not impact the changes proposed in the rulemaking.

Please contact me if you have any questions concerning proposed rulemaking #7-466 or its publication in the January 28, 2012, issue of the Pennsylvania Bulletin.

Thank you.

Michele L. Tate | Regulatory Coordinator Pennsylvania Department of Environmental Protection
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Notice: On Friday, July 29, 2011, the Commonwealth will be adding @pa.gov as the primary email domain for all state employees. For example: mtate@state.pa.us will now be mtate@pa.gov. The email addresses ending in @state.pa.us will continue to function so that emails will never be interrupted. We appreciate your cooperation as we take a small step to increase the usability and consistency of the Commonwealth's online communications.

Annex A

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Title 25 Environmental Protection
Part I. Department of Environmental Protection
Subpart C. Protection of Natural Resources
Article I. Water Resources
Chapter 105. Dam Safety and Water Management

2012 JAN 23 P 9 55

Subchapter A. GENERAL PROVISIONS

PERMIT APPLICATIONS

- 105.11. Permit requirements.
- 105.12. Waiver of permit requirements.
- 105.13. [Permit applications] Regulated activities—information and fees.
- 105.13a. Complete applications.
- 105.13b. Proof of financial responsibility.
- 105.14. Review of applications.
- 105.15. Environmental assessment.
- 105.16. Environmental, social and economic balancing.
- 105.17. Wetlands.
- 105.18. [Reserved].
- 105.18a. Permitting of structures and activities in wetlands.
- 105.19. [Reserved].
- 105.20. [Reserved].
- 105.20a. Wetland replacement.

§ 105.13[Permit applications] Regulated activities —information and fees.

[(a) Application for permits under this chapter shall be submitted to the Department, in writing, upon forms provided by the Department. Applicants are encouraged to request a meeting with the Department prior to submission of their applications.]

[(b) (a) An application for a permit, registration for a general permit, request for permit amendment, major or minor letter of amendment or authorization, major dam design revision, environmental assessments, permit transfer or annual dam registration under this chapter[, except applications submitted by Federal, State, county or municipal agencies or a municipal authority for a dam, water obstruction or encroachment] shall be accompanied by a check payable to “Commonwealth of Pennsylvania” [in accordance with the following schedule]:

- (1) Except for submissions by Federal or State agencies related to any dam; and
- (2) Except for submissions by Federal, State, county or municipal agencies or a municipal authority related to any water obstruction or encroachment.

(b) Fees collected by the Dam Safety and Water Obstruction and Encroachment Programs will be deposited into a restricted revenue account known as the Clean Water Fund and utilized to offset the operating costs to implement respective programs.

(c) The fees are as follows:

(1) Dams based on size and hazard potential category as defined in § 105.91 (relating to classification of dams and reservoirs).

[Class A \$3000

(Based on Size Classification as defined in § 105.91)

Class B \$2500

Class C \$1500]

(i) Dam permit application fees for new dam construction.

<u>Size Category</u> \ <u>Hazard Potential Category</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>A</u>	<u>\$26,500</u>	<u>\$26,500</u>	<u>\$25,500</u>	<u>\$23,500</u>
<u>B</u>	<u>\$19,000</u>	<u>\$19,000</u>	<u>\$18,500</u>	<u>\$17,000</u>
<u>C</u>	<u>\$10,500</u>	<u>\$10,500</u>	<u>\$10,000</u>	<u>\$8,000</u>

(A) Initial fees are based upon the size and hazard potential category of the final operating stage of the dam.

(B) Staged construction requires an additional 90% of the appropriate fee for each additional stage beyond the initial stage of work proposed under this permit application, including any closure stage.

(ii) Dam permit application fees for modification of existing dams.

<u>Size Category</u> \ <u>Hazard Potential Category</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>A</u>	<u>\$18,500</u>	<u>\$18,500</u>	<u>\$18,500</u>	<u>\$18,000</u>
<u>B</u>	<u>\$12,000</u>	<u>\$12,000</u>	<u>\$12,000</u>	<u>\$11,500</u>
<u>C</u>	<u>\$7,500</u>	<u>\$7,500</u>	<u>\$7,500</u>	<u>\$7,500</u>

- (A) Initial fees are based upon the size and hazard potential category of the final operating stage of the dam.
- (B) Staged construction requires an additional 85% of the appropriate fee for each additional stage beyond the initial stage of work proposed under this permit application, including any closure stage.

(iii) Dam permit application fees for operation and maintenance of existing dams.

<u>Size Category</u> \ <u>Hazard Potential Category</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>A</u>	<u>\$12,500</u>	<u>\$12,500</u>	<u>\$12,000</u>	<u>\$10,000</u>
<u>B</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$9,500</u>	<u>\$8,500</u>
<u>C</u>	<u>\$7,000</u>	<u>\$7,000</u>	<u>\$6,500</u>	<u>\$6,000</u>

(iv) Letter of amendment or authorization review fees.

<u>Size Category</u>	<u>Major Project</u>	<u>Minor Project</u>
<u>A</u>	<u>\$14,700</u>	<u>\$1,300</u>
<u>B</u>	<u>\$8,700</u>	<u>\$1,000</u>
<u>C</u>	<u>\$4,400</u>	<u>\$650</u>

- (A) The estimated total construction cost of the project shall be provided to the Department with the submission of the letter of amendment or authorization request.
- (B) A major project is a dam rehabilitation project qualifying for a Letter of Amendment for Dams or a Letter of Authorization for Dams as defined in § 105.1 (relating to definitions) whose total construction costs equals or exceeds \$250,000. If, after completion of the project, the total construction costs do not exceed \$250,000, the Department will refund the difference between major and minor project review fees upon approval of the completion certification as required in § 105.108 (relating to completion certification and project costs).
- (C) A minor project is a dam rehabilitation project qualifying for a Letter of Amendment for Dams or a Letter of Authorization for Dams as defined in § 105.1 (relating to definitions) whose total construction costs are less than \$250,000. If, after completion of

the project, the total construction costs exceed \$250,000, the difference in review fees between major and minor projects must be submitted to the Department with the completion certification as required in § 105.108.

(v) Major dam design revision review fees based on major dam design revision as defined in § 105.1.

<u>Size Category</u>	<u>Fee</u>
<u>A</u>	<u>\$4,700</u>
<u>B</u>	<u>\$3,200</u>
<u>C</u>	<u>\$1,700</u>

(vi) Environmental assessment review fees for non-jurisdictional dams, letters of amendment or letters of authorization.

<u>Size Category</u>	<u>Fee</u>
<u>A</u>	<u>\$1,400</u>
<u>B</u>	<u>\$1,000</u>
<u>C</u>	<u>\$900</u>

(vii) Transfer of dam permit as required in § 105.25.

<u>Type of Dam Permit Transfer</u>	<u>Fee</u>
<u>No Proof of Financial Responsibility Required</u>	<u>\$550</u>
<u>Proof of Financial Responsibility Required</u>	<u>\$300</u>

(viii) Annual dam registration fees as required in § 105.131a.

<u>Size Category</u> \ <u>Hazard Potential Category</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>A</u>	<u>\$1,500</u>	<u>\$1,500</u>	<u>\$800</u>	<u>\$0</u>
<u>B</u>	<u>\$1,500</u>	<u>\$1,500</u>	<u>\$800</u>	<u>\$0</u>
<u>C</u>	<u>\$1,500</u>	<u>\$1,500</u>	<u>\$800</u>	<u>\$0</u>

(A) Annual registration fees are due by July 1 of each year.

(B) If the annual registration fee is not received by July 1, all dams regulated by the Department are subject to a temporary suspension of the dam permit, if applicable, and the owner or operator may be required to drain the reservoir at a rate not to exceed 1 foot per day.

(C) If the annual registration fee is not received by July 1, all dams regulated by the Department qualifying for waiver of permit provisions in § 105.12. (relating to waiver of permit requirements) may be subject to a temporary draining of the reservoir at a rate not to exceed 1 foot per day.

(D) If annual registration fees are not remitted as specified, interest shall accrue on the entire amount from the original date payment was due, at a rate of twelve percent (12%) per annum until payment is remitted.

(2) Water obstructions and encroachments.

[Stream enclosures	\$350
Channel changes	\$300
Commercial dredging	\$300
Peat extraction	\$750
Fills, levees, floodwalls	\$350
Bridges and other water obstructions and encroachments	\$200
Small projects	\$100]

Program	Fee Title	Fee
<u>Obstructions and Encroachments</u>	<u>Administrative Filing Fee (Application fees)*</u>	<u>\$1,750</u>
<u>Obstructions and Encroachments</u>	<u>Permanent Disturbance (waterways, floodways/plains and wetlands per tenth acre, minimum 0.1 acre)*</u>	<u>\$800</u>
<u>Obstructions and Encroachments</u>	<u>Temporary Disturbance (waterways, floodways/plains and wetlands per tenth acre, minimum 0.1 acre)*</u>	<u>\$400</u>
<u>Obstructions and Encroachments</u>	<u>Environmental Assessment for Waived Activities</u>	<u>\$500</u>
<u>Obstructions and Encroachments</u>	<u>General Permits (fees based upon specific general permit activity see section below for listing)</u>	<u>See below</u>
<u>Obstructions and Encroachments</u>	<u>Major Amendment*</u>	<u>\$500</u>
<u>Obstructions and Encroachments</u>	<u>Minor Amendment</u>	<u>\$250</u>
<u>Obstructions and Encroachments</u>	<u>Transfer with SLLA</u>	<u>\$200</u>
<u>Obstructions and Encroachments</u>	<u>Transfer without SLLA</u>	<u>\$100</u>
<u>General Permits</u>		
<u>BDWW-GP-1</u>	<u>Fish Habitat Enhancement Structures</u>	<u>\$50</u>
<u>BDWW-GP-2</u>	<u>Small Docks and Boat Launching Ramps</u>	<u>\$175</u>
<u>BDWW-GP-3</u>	<u>Bank Rehabilitation, Bank Protection and Gravel Bar Removal</u>	<u>\$250</u>
<u>BDWM-GP-4</u>	<u>Intake and Outfall Structures</u>	<u>\$200</u>
<u>BDWM-GP-5</u>	<u>Utility Line Stream Crossings</u>	<u>\$250</u>
<u>BDWM-GP-6</u>	<u>Agricultural Crossings and Ramps</u>	<u>\$50</u>
<u>BDWM-GP-7</u>	<u>Minor Road Crossings</u>	<u>\$350</u>
<u>BDWM-GP-8</u>	<u>Temporary Road Crossings</u>	<u>\$175</u>
<u>BDWM-GP-9</u>	<u>Agricultural Activities</u>	<u>\$50</u>
<u>BDWW-GP-10</u>	<u>Abandoned Mine Reclamation</u>	<u>\$500</u>
<u>BWM-GP-11</u>	<u>Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions and Encroachments*</u>	<u>\$750</u>
<u>BWQP-GP-15</u>	<u>Private Residential Construction in Wetlands*</u>	<u>\$750</u>
<u>* The Disturbance Review Fee is calculated by adding all permanent and temporary impacts to waterways, floodways/plains and bodies of water including wetlands to the next highest tenth acre and multiplied by the respective fee for either permanent impacts or temporary impacts and then this amount is added to the other applicable fee.</u>		

[(c)] (d) A single application may be submitted or a single permit may be issued for multiple structures and activities which are part of a single project or facility or part of related projects and facilities, located in a single county, constructed, operated or maintained by the same persons. When a single application covers multiple structures or activities other than a single structure and related maintenance dredging, the application fee shall be the sum of fees in subsection (b) for the applicable structures and activities. Stream crossings located within a single county for the installation of a public service line shall be treated as a single structure or activity but the application fee shall be the sum of fees for each stream crossing.

[(d)] (e) An application for a permit shall be accompanied by information, maps, plans, specifications, design analyses, test reports and other data specifically required by this chapter and additional information as required by the Department to determine compliance with this chapter.

[(e)] (f) A permit application for small projects located in streams or floodplains shall be accompanied by the following information. This permit application may not be used for projects located in wetlands. If upon review the Department determines that more information is required to determine whether a small project will have an insignificant impact on safety and protection of life, health, property or the environment, the Department may require the applicant to submit additional information and processing fees required by this chapter.

[(f)] (g) Except for small projects, an application for a permit under this chapter shall be accompanied by proof of an application for an Earth Disturbance Permit or an erosion and sedimentation control plan for activities in the stream and earthmoving activities. The plan must conform to requirements in Chapter 102 (relating to erosion control) and must include a copy of a letter from the conservation district in the county where the project is located indicating that the district has reviewed the erosion and sediment control plan of the applicant and considered it to be satisfactory, if applicable. Earthmoving activities, including small projects, shall be conducted pursuant to an earth disturbance plan.

[(g)] (h) An application shall be submitted by the person who owns or has primary responsibility for the proposed dam or reservoir, water obstruction or encroachment. If an application is submitted by a person with primary responsibility for the structure or activity, the owner of a dam or reservoir, water obstruction or encroachment will not thereby be relieved of legal duties or responsibilities for the structure or activity as imposed by the act or this chapter.

[(h)] (i) An application shall be signed by the owners of the dam or reservoir, water obstruction or encroachment, or the persons exercising primary responsibility for the dam or reservoir, water obstruction or encroachment. In the case of a partnership, one or more members of the partnership authorized to sign on behalf of the entire partnership shall sign the application. In the case of a corporation, it shall be signed by the president, vice president or other responsible official empowered to sign for the corporation. In the case of a political subdivision, it shall be signed by the chief officers of the political subdivision or other responsible official empowered to sign for the political subdivision, with the seal affixed and attested by the clerk.

[(i)] (j) Plans, specifications and reports accompanying applications for any category of dams, or for bridges and other water obstructions or encroachments which would pose a threat to human life or substantial potential risk to property shall be affixed with the seal of a registered professional engineer and a certification, signed by the registered professional engineer, which shall read as follows:

"I (name) do hereby certify pursuant to the penalties of 18 Pa.C.S.A. Sec. 4904 to the best of my knowledge, information and belief, that the information contained in the accompanying plans, specifications and reports has been prepared in accordance with accepted engineering practice, is true and correct, and is in conformance with Chapter 105 of the rules and regulations of the Department of Environmental Resources."

[(j)] (k) The Department may waive the specific information requirements of this section in writing, in

the record of decision, if upon review of the permit application, the Department finds that specific information is not necessary to review the application.

(I) The Department will review the adequacy of the fees at least once every 3 years and provide a written report to the EOB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it will contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

§ 105.35. Charges for use and occupation of submerged lands of this Commonwealth.

(a) Except as provided in subsections (b) and (c), the following charges apply to the granting of an easement, right-of-way, license or lease to occupy submerged lands of this Commonwealth issued under section 15 of the act (32 P. S. § 693.15) and § 105.32 (relating to projects—proper purpose):

(1) For commercial utility and other dams, water obstructions and encroachments except as listed in subsection (c), annual license charges:

- (i) For areas occupied by facilities, [~~\$50~~] \$150 per tenth of an acre.
- (ii) For barge fleeting and mooring areas, [~~\$10~~] \$30 per tenth of an acre.
- (iii) Minimum annual charge, [~~\$250~~] \$750.

(2) For private recreation docks, owned and used solely by the owners of adjacent riparian property, unless the project is otherwise authorized by a general permit issued under section 7 of the act (32 P. S. § 693.7), an annual charge of \$250.

(b) Licenses for public service lines crossing or occupying submerged lands of this Commonwealth, issued under section 15 of the act or section 514 of The Administrative Code of 1929 (71 P. S. § 194) are subject to the following schedule of annual charges:

<i>Length of Crossings (in feet)</i>	<i>Charges (in dollars)</i>
Less than 500	[\$250] <u>750</u>
500 to 999	[500] <u>1500</u>
1000 to 1499	[1000] <u>3000</u>
1500 to 1999	[1500] <u>4500</u>
2000 to 2499	[2000] <u>6000</u>
2500 to 2999	[2500] <u>7500</u>
3000 to 3499	[3000] <u>9000</u>
3500 to 3999	[3500] <u>10,500</u>
4000 to 4499	[4000] <u>12,000</u>
4500 to 4999	[4500] <u>13,500</u>
5000 and over	[5000] <u>15,000</u>

* * * * *

Subchapter B. DAMS AND RESERVOIRS

* * * * *

OPERATION, MAINTENANCE AND EMERGENCIES

105.131. Operation maintenance, and monitoring.

105.131a. Annual dam registration.

105.132. [Reserved].

105.133. Directed repairs.

105.134. EAP.

105.135. Dam hazard emergencies.

105.136. Unsafe dams.

§ 105.131a. Annual dam registration.

This chapter establishes annual dam registration fees according to 105.13 (b)(viii) (relating to annual dam registration fees) for the Department's administration of the act.

§ 105.444. Contents of general permits.

Each general permit issued by the Department will include, but not be limited to, the following contents:

* * * * *

(5) A specification of registration requirements if any, established under § 105.447 (relating to registration requirements), **and any registration or general permit fees established under Section 105.13 (relating to regulated activities - information and fees).**

§ 105.448. Determination of applicability of a general permit.

* * * * *

(b) A request for a determination of the applicability of a general permit may not be considered a permit application for purposes of this chapter. **[and no application fee will be charged].**

(c) A project requiring registration under § 105.447 may be charged an application fee as set forth in the general permit governing each category of dam, water obstruction or encroachment.